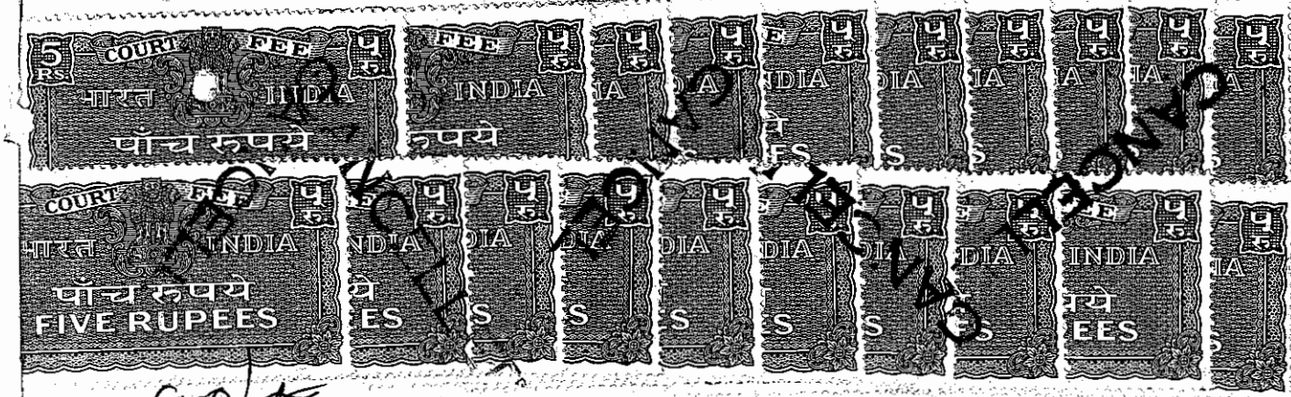

IN THE HIGH COURT OF JUDICATURE AT JABALPUR. (3)

WRIT PETITION 2603 OF 1998.

PETITIONER : Ravindra Nath Son of Late Sarad Chandra Nath, aged about 57 years, Principal Bengali Higher Secondary School, Bilaspur.

-VERSUS-

RESPONDENTS:
1. Joint Director, School Education, Divisional Bilaspur.
2. Bengali Association Bilaspur, through its General Secretary.
3. Secretary, Bengali Association (School Section) Bilaspur.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

COURT FEE INDIA भारत पांच रुपये FIVE RUPEES

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Court order
1/10/2001
amend incorporating
Received
11/10/01
Shri K. Srivastava
Advocate
Attested
DRO
1/11/

District Education Officer Bilaspur.

(101) APR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 2603 of 1998

Ravindra Nath

Versus

District Education Officer and others

Order be posted for 27-11-2006

Sd/-
Dhirendra Mishra
Judge

(102)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2603/1998

PETITIONER : **Ravindra Nath**

Versus

RESPONDENTS : **District Education Officer and others**

Shri M.P.S. Bhatia counsel for the petitioner.
Shri Satish Gupta GA for respondent No.1/State.

ORDER

(25-11-2006)

The petitioner by this petition under Articles 226/227 of the Constitution of India has challenged the order dated 2/17-6-93 (Annexure-I) whereby the respondent No.2 on the basis of inquiry report of the inquiry officer has removed the petitioner from the post of Principal, Bengali Higher Secondary School, with immediate effect.

2. The case of the petitioner is that he was appointed as Principal and confirmed on the said post vide Annexure –A in the year 1977. The Bengali Higher Secondary School is run by respondent No.2 which gets grant in aid from the State Government. Respondent No.3 is the Secretary of the School. The services of the teachers and employees of non government school receiving grant in aid from the State Government are regulated by Chhattisgarh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyon Ke Vetan Ka Sandaya) Adhiniyam, 1978 (hereinafter referred to as Adhiniyam of 1978) and the State Government has framed Rules known as Chhattisgarh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyon Ko Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam 1983 exercising powers under Section 10 of the Adhiniyam of 1978.

3. The petitioner was served with memorandum of charge dated 26.2.1993 (Annexure-B). The petitioner denied the charges vide his reply dated 6.3.1993 vide Annexure-C whereupon the respondent No. 3 decided to conduct Departmental Enquiry and appointed one Mr. B.N. Chakraborti, retired ASO as Enquiry Officer to enquire into the charges against the petitioner vide Annexure-D. The petitioner again addressed memo dated 6.4.1993 of Annexure-E and challenged the authority of respondent No.2 to nominate the Enquiry Officer claiming that rule does not authorize for the same and expressed his disagreement to the advice to attend Inquiry. The Enquiry Officer vide memorandum of Annexure-F addressed to the petitioner again requested him to attend the inquiry as scheduled, failing which ex parte inquiry was threatened to be conducted. The petitioner addressed a memorandum dated 10.4.1993 of Annexure-G to the respondent No.3 and reiterated that the proposed inquiry to be conducted against him by a chosen inquiry officer is contrary to law and rules. However, the Inquiry Officer conducted ex parte inquiry against him and submitted his inquiry report to the respondent No.2 who after considering the inquiry report and findings recorded, ordered removal of the petitioner from the post of Principal vide Annexure-I. The petitioner unsuccessfully challenged the above order by way of civil suit in the Court of 5th Civil Judge Class-II Bilaspur, however, the same was dismissed vide order of Annexure-J with a finding that the appellate authority constituted under Section 6 of the Adhiniyam of 1978 has the jurisdiction to entertain the appeal against the order of punishment imposed on the petitioner.

4. Learned counsel for the petitioner submits that the State Government has framed rules of 1983 in exercise of the powers under Section 10 of the Adhiniyam of 1978 and the Inquiry Officer appointed by the management has no authority under the law to inquire into the charges framed because as per Rule 7-B of the Rules 1983 the Inquiry Officer was to be appointed by the Divisional Superintendent, Education presently posted as the Joint Director. He submits that Rule 12 (3) (b) of the Rules of 1983 specifically provides that before taking a decision in respect of

inquiry held, the whole case along with the proposals of the order intended to be passed is to be sent to the competent authority for its approval and in case of the petitioner the Joint Director, Education was the competent authority. However, the respondents without obtaining approval of the competent authority have passed the order of punishment vide Annexure-I and therefore, the above order is nullity in the eyes of law.

5. The respondents No. 2 and 3 in their return submitted that their institution is a Linguistic Minority Institution being protected under Article 30 (1) of the Constitution of India vide Annexure R-2(1). The petitioner was afforded full opportunity to present his case. The Inquiry Officer acted impartially and observed the principle of natural justice and only after due consideration the order of removal of the petitioner from the post of Principal was passed. Respondent No.1 in its separate reply has stated that Rules of 1983 framed under the Act of 1978 are applicable to the respondents 2 and 3. The State Government vide circular dated 16.5.2000 of Annexure R-2 revoked earlier circular dated 11.4.1984 Annexure R-1 and 12.7.1984 with immediate effect and clarified that for the purpose of appointment in the aided institutions, Religious and Linguistic Minorities Group shall also observe various eligibility criteria fixed by the State Government from time to time.

6. Learned counsel for the petitioner submits that the instant petition was admitted by this Court in the year 1998 and therefore, availability of the alternative remedy of statutory appeal under Section 6 of the Adhiniyam 1978 and the rules made there under shall not come in the way of this petition. He placed reliance on the decision of the Supreme Court in the matter of Dr. (Smt.) Kuntesh Gupta reported in AIR 1987 2186. He further placed reliance on the decision of Supreme Court in the matter of TMA Pai Foundation Vs. State of Karnatka reported in AIR 2003 SC 355, it is argued that the aided institution run by Linguistic Minority Group are subject to the Adhiniyam and the Rules made there under.

7. On the other hand learned counsel for respondents 2 and 3 referring to the document of Annexure R-1 being the circular dated 11.4.1984 issued by the Directorate, Public Education, submits that the provisions of Section 6-A sub section (iii) (iv), Section 6-B and 6-C of the Adhiniyam of 1978 shall not be applicable to an aided Religious and Linguistic Minority institution. He further submits that the respondents 2 and 3 is an Linguistic Minority institution and thus is protected under Article 30(1) of the Constitution of India and therefore, at the relevant time when general circular issued by the State Government was in force, there was no legal requirement on the part of the institution to obtain sanction /approval of the competent authority under the Adhiniyam of 1978 before taking disciplinary action against the petitioner.

8. I have heard learned counsel for the parties, perused the pleadings and the documents filed by the parties.

9. The petitioner was served a detailed charge sheet vide Annexure-C. Articles of charge framed against the petitioner were of the nature that while holding the post of Principal of the Institution he instigated and misguided the teaching and non teaching staff of Bengali School to go on strike and he himself was a signatory to the strike notice. He got his son Manoj Kumar Nath admitted to class 8th by giving false declaration and producing false Transfer Certificate in his favour. However, the petitioner in stead of specifically replying the charges leveled against him hurled counter allegations that the act of respondents 2 and 3 was biased and inclined to one side, revengeful and malicious and therefore, denied. In these circumstances, the respondent Society ordered to conduct disciplinary proceedings and appointed the enquiring authority to inquire into the charges framed against the petitioner. However, the petitioner instead of participating in the inquiry proceedings raised an objection that the inquiry officer has been appointed in violation of the Rules of 1983. In these circumstances the inquiry was held ex parte and the petitioner was removed from the post of Principal vide order of Annexure-I on the basis

of inquiry report. The above order was assailed by the petitioner by way of civil suit in the court of 5th Civil Judge Class-II Bilaspur which was dismissed with a finding that the order impugned is appellable before the appellate authority under Section 6 of the Act of 1978. However, the petitioner instead of preferring an appeal under section 6 of the Act, has preferred this writ petition solely on technical ground that the appointment of the inquiry officer was contrary to the rules of 1983 and that the respondents before proceeding against the petitioner on the basis of inquiry report did not forward the report along with the documents and proposed imposition of penalty against the petitioner.

10. The only objection that has been raised by the petitioner is that the appointment of the inquiry officer for conducting inquiry against the petitioner was made in contravention of Rule 7(i) (b) of the Rules of 1983 and the order of termination is also in contravention of Rule 12(3)(b) of the rules of 1983. Circular dated 11.4.1984 – Annexure R-1 pertains to the staff recruitment/disciplinary action against the aided institution established by Religious and Linguistic Minority group and in the said circular it has been categorically mentioned that provisions of Section 6-a (iii) (iv) 6(c) and (d) of Rules of 1983 will have no application to an aided Minority and Linguistic institutions. The constitutional validity of this circular was questioned and the High Court of Madhya Pradesh in the matter of **S. Ram, Principal Vs. G.P. Shrivastava, Registrar and others** reported in **1992 MPLJ 49** has approved the ratio laid down by the Division Bench in the matter of **Siddhi Bala Bose Library Association Vs. State of Bihar** reported in **AIR 1979 MPLJ 379** held as under:

> "The only legislative change, after the above decision, was amendment of section 6(a)(iii) of the Act and prescribing procedure of holding disciplinary enquiry by rules which include the provision for getting approval from the competent authority before terminating or removing or dispensing with the service of an employee of an educational institution. On the same reasoning, on which unamended provisions in the Act, were held violative of Article 30 of the

> Constitution of India. Similar provisions in the rules intending to interfere with the right of disciplinary control of minority rules intending to interfere with the right of disciplinary control of minority over their institutions can be held invalid under Article 30(1) of the Constitution. We do not find anything in the later decisions of the Supreme Court (supra) taking a different view with regard to the power of the disciplinary control of Authority of an aided minority institution. The circular of the Government, is therefore, in tune with the spirit and content of Article 30(1) of the Constitution and the rules quoted above on which reliance has been placed by the petitioner can be no application to the minority institutions. A passage in Frank Authority Public School (supra) to which our attention was specially invited by the learned counsel for the petitioner fully supports the view taken by the Division Bench of this Court in the case of Siddhi Bala Bose Library (supra). The permissible regulatory provisions for the aided minority institutions, which were made inapplicable to unaided institutions by the provisions of section 12 of the Delhi School Education Act, have been held discriminatory by the Supreme Court in the case of Frank Anthony Public School (supra). But the provisions of section 8(2) of Delhi Act, requiring approval to disciplinary action, is substantially similar to section 6(a)(iii) of the Act and Regulation 79 of the Board of Secondary Education (quoted above), have been held violative of Article 30(1) of the Constitution of India.

Even otherwise, on facts it is seen that the petitioner without denying the charges proposed against him has taken a technical view and refused to participate in the inquiry proceedings and thereafter on the basis of inquiry conducted by inquiry officer who has afforded reasonable opportunities to the petitioner to participate in the inquiry proceedings, however, the petitioner did not participate and refused to avail of the right of defence.

11. Consequently, in view of above discussion the petition fails and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge